

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT
May 19, 2011
Agenda Item 2

SUBJECT: 3-Thirty-3 Waterfront Restaurant (PA2011-041)
333 Bayside Drive
• Conditional Use Permit No. UP2011-007

APPLICANT: Jeff Reuter

PLANNER: Janet Johnson Brown, Associate Planner
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PROJECT SUMMARY

The application consists of a request for a new conditional use permit to extend the hours of operation granted by Accessory Outdoor Dining Permit No. 2007-001 for an existing outdoor dining patio from 9:00 a.m. to 9:30 p.m. daily to 9:00 a.m. to 1:00 a.m. daily. The hours of operation for the interior portion of the existing restaurant are 9:00 a.m. to 2:00 a.m. daily, as allowed by Use Permit No. 3325 (amended). If approved, the new conditional use permit will supersede the existing use permit and accessory outdoor dining permit, and an Operator License will be required.

RECOMMENDATION

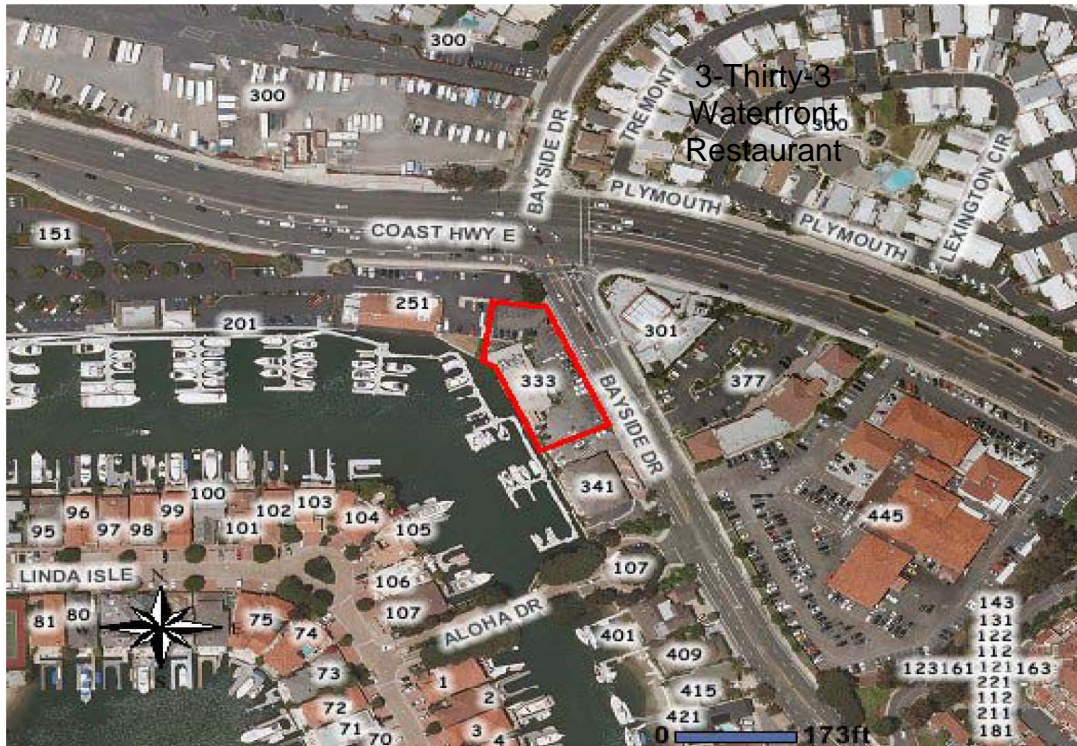
- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Conditional Use Permit No. UP2011-007 (Attachment No. PC 1), subject to Conditions of Approval including the requirement that the applicant/operator obtain an Operator License issued by the Chief of Police in order to operate a restaurant in combination with late hours and alcoholic beverage service.

INTRODUCTION

Project Setting

The existing restaurant is located at the southwest corner of Bayside Drive and East Coast Highway. The surrounding land uses include a restaurant and commercial parking lot to the west, office uses to the southeast, and a Chevron service station and shopping center to the east across Bayside Drive. The Linda Isle single-family residential neighborhood is located to the south of the project site, and a boat storage and mobile home park is located to the north across East Coast Highway. Boat docks maintained by the Balboa Marina are located on the channel in front of the restaurant and to the west of the restaurant site.

VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Recreational and Marine Commercial (CM)	Commercial Recreational and Marine (CM)	Restaurant and Office Developments
NORTH	Recreational and Marine Commercial (CM)	Bayside Village Boat Launch & Storage Planned Community (PC9)	Boat Storage and Mobile Home Park (across East Coast Highway)
SOUTH	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Linda Isle Residential Neighborhood
EAST	General Commercial (CG)	Commercial General (CG)	Service Station and Retail Center
WEST	Recreational and Marine Commercial (CM)	Commercial Recreational and Marine (CM)	Sol Cucina Restaurant and Commercial Parking Lot

Project Description

The applicant requests to extend the hours of operation for an existing outdoor dining patio from 9:00 a.m. to 9:30 p.m. daily to 9:00 a.m. to 1:00 a.m. daily. No other changes to the existing restaurant operations are requested or proposed. The applicant intends to continue operating the existing restaurant in a manner consistent with the previous conditions of approval granted by Use Permit No. 3325 (amended) and Accessory Outdoor Dining Permit No. 2007-001 (Attachment No. PC 2).

The existing restaurant is located on the second floor of an 8,409 gross square foot building. The restaurant occupies 4,480 gross square feet of the building, of which 2,560 square feet is considered net public area. The hours of operation of the interior portion of the restaurant are 9:00 a.m. to 2:00 a.m. daily.

Background

The restaurant use was established in 1968 when use permits were not required for a restaurant. In September 1988, Use Permit No. 3325 was approved by the Planning Commission to allow an increase in the restaurant occupancy and establish the required off-street parking based on net public area. Amendments to the use permit were approved by the Planning Commission in January 1992 and May 1995. Under the conditions of the existing use permit, the restaurant is allowed to operate as a full-service eating and drinking establishment with alcoholic beverage sales (Type 47 ABC license) from 9:00 a.m. to 2:00 a.m. daily. Sixty-four (64) parking spaces are required during evenings and weekends.

In June 2007, the Planning Commission granted approval of Accessory Outdoor Dining Permit No. 2007-001. The outdoor dining patio is limited to a 636 square feet in area, and a maximum of 37 seats with dining tables only. Elevated counters and barstools are prohibited, and use of the area is required to close by 9:30 p.m.

DISCUSSION

When the Zoning Code was updated, the requirement for a separate application for accessory outdoor dining was eliminated. Thus, the request to extend the hours of operation granted by Accessory Outdoor Dining Permit No. 2007-001 requires approval of a new conditional use permit for the overall operations of the existing restaurant. The conditions of approval from the previous use permit and accessory outdoor dining permit have been carried forward, and new conditions have been included related to standard operations for eating and drinking establishments, as well as the requirement that the applicant obtain an Operator License to operate a restaurant in combination with late hours and alcoholic beverage service.

Analysis

Late Hour Operations

Under the provisions of the Zoning Code, the existing restaurant is defined as a "Food Service, Late Hours" eating and drinking establishment. When reviewing an application to allow late-hour operations, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses:

1. *Noise from music, dancing, and voices associated with allowed indoor or outdoor uses and activities;*
2. *High levels of lighting and illumination;*
3. *Increased pedestrian and vehicular traffic activity during late night and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

The existing restaurant is located adjacent to an office building on the southeast, and another restaurant and commercial parking lot on the west. The Linda Isle residential neighborhood is located to the south of the project site across a boating channel. The nearest residence is located approximately 215 feet from the existing restaurant.

As previously stated, no changes to the existing restaurant operations are requested or proposed by the applicant with the exception of a change to the closing time of the outdoor dining patio area from 9:30 p.m. to 1:00 a.m. Thus, impacts associated with lighting, increased trash, and occupancy loads of the use are not expected.

Dancing is prohibited throughout the entire restaurant, per the Live Entertainment Permit issued to the applicant in February 2006. Incidental background music is allowed, and live entertainment is limited to a maximum of two performers confined to the interior portion of the restaurant building.

In order to control noise emanating from the outdoor dining patio, this area was constructed with a full-height combination wall and sound-attenuating window assembly. As conditioned, the windows are required to be closed each day at 9:00 p.m. and may be opened at 8:00 a.m. the following day. Pursuant to the conditions of approval, no live entertainment is permitted in the outdoor dining area. Further, all noise generated by the existing restaurant, including the outdoor dining area, is required to comply with the provisions of the Noise Ordinance (Chapter 10.26) of the Newport Beach Municipal Code (NBMC).

There may be an increase in pedestrian and vehicular traffic activity from patrons using the outdoor dining area during late night and early morning hours. However, impacts from this increase in activity would be mitigated due to the location of the existing valet parking pick-up and drop-off area, and the designated smoking area, which are shielded from residences on Linda Isle by the restaurant building.

Late Hour Operations: Noise Complaints

Use of the outdoor dining patio began in April 2010. In July 2010, the Code Enforcement Division received complaints regarding alleged violations of the conditions of approval. Code Enforcement contacted the applicant and discussed the complaints, and the applicant took corrective action to ensure compliance with the conditions of approval. No further complaints have been received by the Code Enforcement Division since September 2010.

The complaints were also forwarded to the Newport Beach Police Department (NBPD) for further investigation. The NBPD reported that after subsequent investigations, as well as interviews with the applicant and the complaining parties, it was evident that the noise was being generated from people on the nearby docks/boats, not necessarily patrons in the restaurant. Further, there was no indication that use of the outdoor dining patio was the cause of the noise complaints. The NBPD reports that it appears that the applicant has taken reasonable steps to mitigate the noise on the docks as complaints to the NBPD have declined. (See Attachment No. PC 3 – NBPD Memorandum dated April 4, 2011.)

In response to complaints regarding noise generated from the nearby docks, the Harbor Commission approved a "Temporary Guest Slip Use Program" for the Balboa Marina in February 2011. The plans require that the temporary guest slips be moved from the current location in front of the restaurant site to a point farther west and more central in the marina. The temporary guest slips may only be accessed through an electronically controlled security gate system, which will be set to automatically unlock at 7:00 a.m. and lock at 10:00 p.m. each day. This new program is anticipated to be implemented in early-to-mid summer.

Conditional Use Permit Findings

In order to grant approval of a conditional use permit, the Planning Commission must make each of the following findings:

1. *The use is consistent with the General Plan and any applicable specific plan;*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*
3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Staff believes that findings for approval can be made, and facts in support of the required findings are included in the draft resolution (Attachment PC No. 1). The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of the Recreational and Marine Commercial (CM) land use designation of the General Plan, and Commercial Recreational and Marine (CM) Zoning District.

Updated conditions of approval related to standard operations for eating and drinking establishments with alcoholic beverage sales have been included for the overall operations of the existing restaurant. With adherence to the proposed conditions of approval, the project will comply with Zoning Code standards. Conditions are included related to on-sale alcoholic beverage activities, including training of personnel who sell or serve alcoholic beverages, and the provision of security personnel while live entertainment is offered. Adequate on-site parking is maintained and provided by complimentary valet service during all hours of operation. The location of the existing valet parking pick-up and drop-off area, and the designated smoking area have proven effective in eliminating noise impacts to nearby residents. The design and construction materials of the outdoor dining patio, and the requirement that the windows be closed at 9:00 p.m., prevent excessive noise from emanating from this area.

The NBPD indicates it has no objections to the applicant's request to extend the hours of operation on the outdoor dining patio. Based on reports from the Code Enforcement Division and the NBPD, the applicant has demonstrated the continued willingness and ability to control noise generated by patrons of the restaurant.

To ensure the change in hours of operation does not create a detrimental impact during late hours, the applicant (and any future operators of the existing eating and drinking establishment) shall be required to obtain an Operator License issued by the Chief of Police pursuant to Chapter 5.25 of the NBMC. The entire operations will be subject to the Operator License. Additionally, the applicant will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance to areas surrounding the restaurant and adjacent properties during business hours. If the operator is unable to abide by the conditions of approval, or prevent objectionable conditions from occurring, the NBPD will have the authority to modify, suspend, or revoke the operator's ability to maintain late-hour operations, or require other corrective measures.

Alternatives

1. The Planning Commission may suggest specific operational changes that are necessary to alleviate concerns. If the changes are substantial, the item should be continued to a future meeting.
2. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission should deny the application.

Environmental Review

The project is categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities), because the change in hours of operation does not involve an expansion of an existing use.

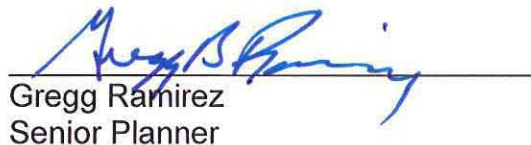
Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all property owners within 300 feet of the property, and posted at the project site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:


Janet Johnson Brown
Associate Planner


Gregg Ramirez
Senior Planner

ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions of Approval
- PC 2 Use Permit No. 3325 & Accessory Outdoor Dining Permit No. 2007-001
- PC 3 NBPD Memorandum
- PC 4 Project plans and photographs
- PC 5 Applicant's written statement

Attachment No. PC 1

Draft Resolution with Findings and
Conditions of Approval

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-007 FOR AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 333 BAYSIDE DRIVE (PA2011-041)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jeff Reuter, with respect to the property located at 333 Bayside Drive, and legally described as Lot B of Parcel Map Book 16 Page 10 (Resubdivision No. 249), requesting approval of a new conditional use permit.
2. The applicant filed an application requesting a new conditional use permit to extend the hours of operation granted by Accessory Outdoor Dining Permit No. 2007-001 for an existing outdoor dining patio from 9:00 a.m. to 9:30 p.m. daily to 9:00 a.m. to 1:00 a.m. daily. No other changes to the existing restaurant operations were requested or proposed.
3. The subject property is located within the Commercial Recreational and Marine (CM) Zoning District and the General Plan Land Use Element category is Recreational and Marine Commercial (CM).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Recreational and Marine Commercial (CM-A).
5. A public hearing was held on May 19, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1- Existing Facilities.
2. This exemption applies to existing facilities where it can be demonstrated the project involves no expansion of the existing use. The change in hours of operation does not involve an expansion of the existing use.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

- A. The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support Finding:

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Newport Beach Police Department (NBPD) relative to the sale of alcoholic beverages will ensure compatibility with the surrounding use and minimize alcohol-related impacts.
- A-2. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require that the applicant, as well as any future operators of the existing eating and drinking establishment, obtain an Operator License to ensure the establishment is operated in a safe manner.

In accordance with Section 20.20.020 of the Zoning Code, eating and drinking establishments classified as "Food Service, Late Hours" require the approval of a conditional use permit within the Commercial Recreational and Marine (CM) Zoning District. In accordance with Section 20.52.020.F of the Zoning Code, the following findings and facts in support of such findings are set forth:

Finding:

- B. The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

- B-1. The Recreational and Marine Commercial (CM) land use designation of the General Plan is intended to encourage and provide for mutually supportive business and visitor-serving uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation.
- B-2. Food service uses are expected to be located in commercial areas, and are complementary to the existing commercial and residential uses in the area. Such uses are frequented by visitors, tenants of the nearby commercial uses, and residents alike.
- B-3. The subject property is not part of a specific plan area.

Finding:

- C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

- C-1. The subject property is located in the Commercial Recreational and Marine (CM) Zoning District, and eating and drinking establishments classified as “Food Service, Late Hours” require the approval of a conditional use permit.
- C-2. As conditioned, the project will comply with Zoning Code standards for eating and drinking establishments. Conditions are included related to on-sale alcoholic beverage activities, including the training of personnel, and the provision of security personnel while live entertainment is offered.
- C-3. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require the applicant, and any future operator of the eating and drinking establishment, to obtain an Operator License from the NBPd in order to maintain operating hours beyond 11:00 p.m.

Finding:

- D. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- D-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.
- D-2. Adequate parking is maintained on-site and provided by complimentary valet service during all hours of operation.
- D-3. The location of the valet parking pick-up and drop-off area, and the designated smoking area, is shielded from the residences by the restaurant building, thereby mitigating noise impacts from this activity.
- D-4. The design and construction materials of the outdoor dining patio prevent excessive noise from emanating from this area. As conditioned, the sound attenuating windows are required to be closed from 9:00 p.m. to 8:00 a.m. A condition of approval is included requiring that recorded music or other types of sound amplification within the outdoor patio area shall only be audible to the audience within the patio area, and shall cease after the hour of 10:00 p.m. daily.

Finding:

- E. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- E-1. This is an existing eating and drinking establishment that has existed in this location since 1968, and the project site has proven to be physically suitable in size to accommodate the use.
- E-2. The project site is located at the southwest corner of Bayside Drive and East Coast Highway, and is surrounded by similar commercial uses located to the west, and the southeast of the use. This is an appropriate location for an eating and drinking establishment. The use is complementary to the existing commercial uses in the area, as well as the residential uses located to the south of the project site.
- E-3. The Traffic Engineer has previously reviewed the configuration of the parking lot, as well as the valet parking plan, and has determined the parking lot design functions safely and does not prevent emergency vehicle access to the establishment.
- E-4. The site is currently served by public services and utilities.

Finding:

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- F-1. The project has been reviewed and conditioned to ensure the continued operation of the existing eating and drinking establishment will not be detrimental to the community.
- F-2. An increase in pedestrian and vehicular activity from patrons using the outdoor dining area during late night and early morning hours may occur. However, impacts from this increase in activity would be mitigated due to the location of the existing valet parking pick-up and drop-off area, and the designated smoking area, which are shielded from residences on Linda Isle by the restaurant building.
- F-3. The applicant has operated the existing eating and drinking establishment in this location since 2004, and has demonstrated the continued willingness and ability to control noise generated by patrons of the restaurant. The applicant will be required to obtain an Operator License from the NBPd in order to extend the hours of operation of the outdoor dining patio to 1:00 a.m. The Operator License will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the existing establishment, and will provide the NBPd with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit No. UP2011-007, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3325 (amended) and Planning Commission Resolution No. 1724, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-007, shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF MAY, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Earl McDaniel, Chairman

BY: _____
Michael Toerge, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL**
*(Project-specific conditions are in italics)***PLANNING**

1. *The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)*
2. *Conditional Use Permit No. 2011-007 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.*
3. *The hours of operations shall be limited to between 9:00 a.m. and 11:00 p.m. daily, unless the applicant/operator, including any future operator, secures and maintains an Operator License issued by the Chief of Police, pursuant to Chapter 5.25 of the NBMC. In no case shall the interior portion of the eating and drinking establishment be permitted to operate beyond the hour of 2:00 a.m. daily. The outdoor dining patio shall not be permitted to operate beyond the hour of 1:00 a.m., daily.*
4. *The sound attenuating windows on the outdoor dining patio shall be closed from 9:00 p.m. to 8:00 a.m. daily.*
5. *All doors and windows of the interior of the eating and drinking establishment shall remain closed at all times except for the ingress and egress of patrons and employees.*
6. *The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
7. *Full meal service shall be provided and available for ordering at all times the establishment is open for business.*
8. *The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities shall be allowed within the area of the outdoor dining patio.*
9. *The outdoor dining patio shall be limited to 636 square feet in area.*
10. *The outdoor dining area shall be limited to a maximum of 37 seats, including disabled seats/table space. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited.*
11. *All employees shall park on on-site.*

12. *The net public area of the interior portion of the eating and drinking establishment shall not exceed 2,560 square feet.*
13. *A minimum of 34 parking spaces shall be provided on-site for the daytime operation of the eating and drinking establishment Monday through Friday. A total of 64 parking spaces shall be provided on-site for all other hours of operation of the establishment (one parking space for each 40 square feet of net public area).*
14. *Prior to implementation of the late hours on the outdoor dining patio, the applicant/operator shall submit a valet parking plan for review and approval by the Public Works Department and Community Development Department/Planning Division. The valet parking plan shall demonstrate that adequate on-site parking, vehicular circulation and pedestrian circulation systems are provided. The valet parking plan shall include the location of valet parking pick-up and drop-off area so as to be shielded from nearby residences on Linda Isle by the subject restaurant building in order to minimize the transmission of noise to Linda Isle to the maximum extent feasible. The parking plan shall include a waiting/queuing area for guests dropping off or picking up automobiles from valet parking and a designated smoking area for patrons of the restaurant.*
15. *The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons be courteous to residential neighbors while outside the establishment.*
16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
17. The applicant/operator shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
18. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
19. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
20. This Conditional Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
21. Approval of Conditional Use Permit No. 2011-007 is for the operation of an eating and drinking establishment defined as "Food Service, Late Hours" per Title 20 of the

NBMC, and does not permit or authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.

22. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
23. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
24. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
25. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
26. *The washing of the outdoor dining patio with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.*
27. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
28. All noise generated by the existing eating and drinking establishment use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00 a.m. and 10:00 p.m.	Between the hours of 10:00 p.m. and 7:00 a.m.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

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29. *The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Community Development Director.*
 30. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
 31. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
 32. *No live entertainment shall be allowed in the interior of the eating and drinking establishment unless the operator has first obtained a permit from the City.*
 33. *No outside paging system or loudspeaker device shall be used in conjunction with this establishment.*
 34. *No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.*
 35. *No dancing shall be allowed on the premises of the eating and drinking establishment.*
 36. *The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department (NBPD). The procedures included in the plan and any recommendations made by the NBPD shall be implemented and adhered to for the life of the Conditional Use Permit.*
 37. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
 38. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
 39. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
 40. The applicant/operator shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed

necessary by the Code Enforcement Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

41. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
42. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
43. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
44. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
45. All exists shall remain free of obstructions and available for ingress and egress at all times.
46. Strict adherence to maximum occupancy limits is required.
47. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
48. All owners, managers and employees selling, serving or giving away alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
49. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
50. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.

51. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
52. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
53. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPD on demand.
54. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
55. All signs shall be in conformance with the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
56. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
57. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
58. To the fullest extent permitted by law, applicant/operator shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 3-Thirty-3 Waterfront Restaurant including, but not limited to, the Use Permit No. 2011-007. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 2

Use Permit No. 3325 (amended) and
Accessory Outdoor Dining Permit
No. 2007-001

September 22, 1988

CITY OF NEWPORT BEACH

ROLL CALL			INDEX
Ayes Noes	WINBURN POMEROY PERSON MERRILL EDWARDS DISANO DEBAY	<p>ingress/egress on to West Coast Highway. She said that the parking lot is used to avoid the traffic signal at Superior Avenue and West Coast Highway. Commissioner DeBay stated that she measured parking spaces that are under eight feet in width and not labeled as compact parking spaces.</p> <p>Motion was voted on to deny Use Permit No. 3323 subject to the findings in Exhibit "B". MOTION CARRIED.</p> <p><u>FINDINGS:</u></p> <ol style="list-style-type: none"> 1. That the proposed on-site parking is inadequate for the subject take-out restaurant and further that said restaurant is located adjacent to a residential area where the existing demand for on-street parking is very high. 2. That the proposed take-out restaurant is not compatible with the surrounding residential land uses. 3. The approval of Use Permit No. 3323 will, under the circumstances of the case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood and will be detrimental and injurious to property or improvements in the neighborhood and the general welfare of the City. <p style="text-align: center;">* * *</p> <p><u>Use Permit No. 3325 (Public Hearing)</u></p> <p>Request to increase the allowable occupancy of the former Baxter's Restaurant facility, and to establish a new parking requirement based upon "net public area". The proposal also requests to change the operational characteristics of the former restaurant facility which served breakfast, lunch, and dinner, and maintained a cocktail lounge with live entertainment and dancing. The proposed restaurant will consist of a bar and a dining room with incidental background music, and will only be open for business between 5:00 p.m. and 2:00 a.m. daily and for Sunday brunch. The proposal also includes the utilization of on-site parking spaces and reciprocal parking on adjoining commercial property, and a modification to the Zoning Code so as to permit a valet parking service.</p>	
			<p>Item No. 4</p> <p><u>UP3325</u></p> <p><u>Approved</u></p>

September 22, 1988

DEBAY
DISANO
EDWARDS
MERRILL
PERSON
POMEROY
WINBURN

CITY OF NEWPORT BEACH

ROLL CALL	INDEX
	<p>LOCATION: Lots A and B of Parcel Map 6-10 (Resubdivision No. 249) and a portion of Lot 1, Tract No. 5361, located at 333 Bayside Drive, on the southwesterly corner of East Coast Highway and Bayside Drive, across from the De Anza Mobile Home Park.</p> <p>ZONE: C-1-H</p> <p>APPLICANT: Hans Prager, Newport Beach</p> <p>OWNER: Marvin Burton, Newport Beach</p> <p>The public hearing was opened in connection with this item, and Mr. Hans Prager, applicant, appeared before the Planning Commission. Mr. Prager described the New England themed "Yankee Tavern" Restaurant, and he stated that said restaurant will be open during the dinner hours and there are plans to open for Sunday Brunch.</p> <p>Mr. Marvin Burton, property owner, appeared before the Planning Commission. Mr. Burton stated that he had conferred with the applicant regarding the findings and conditions in Exhibit "A", and that they had agreed with same. Mr. Burton distributed letters from Mr. Wambaugh, Linda Isle, and Ms. Lynne Valentine, occupant of the ground floor on the adjacent property south of the subject site, who are in support of the subject application.</p> <p>In response to a question posed by Commissioner Merrill, Mr. Prager replied that the restaurant is proposed to be open by February 1, 1989.</p> <p>In response to a question posed by James Hewicker, Planning Director, Mr. Prager replied that the restaurant will employ their own valet service.</p> <p>There being no others desiring to appear and be heard, the public hearing was closed at this time.</p> <p>Motion was made to approve Use Permit No. 3325 subject to the findings and conditions in Exhibit "A".</p> <p>Commissioner Person stated that he would support the motion based on the applicant's successful record as a restaurateur in Newport Beach.</p>

Motion

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September 22, 1988

DEBAY
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POMEROY
WINBURN

CITY OF NEWPORT BEACH

ROLL CALL			INDEX
All Ayes		<p>Commissioner Di Sano concurred with the foregoing statement in support of the use permit application.</p> <p>Chairman Pomeroy stated his support of the motion, and the characteristics of the restaurant.</p> <p>Motion was voted on to approve Use Permit No. 3325 subject to the findings and conditions in Exhibit "A". MOTION CARRIED.</p> <p><u>FINDINGS:</u></p> <ol style="list-style-type: none"> 1. That the subject proposal is consistent with the Land Use Element of the General Plan and with the Local Coastal Program and is compatible with the surrounding land uses. 2. That the project will not have any significant environmental impact. 3. That the waiver of the development standards as they pertain to walls, utilities, parking lot illumination, and landscaping will not be detrimental to adjoining properties. 4. That the restaurant will be open only during those hours when office uses on the site and in the adjoining building are closed for business. 5. That the design of the proposed improvements will not conflict with any easements acquired by the public at large for access through or use of any property within the proposed development. 6. That public improvements may be required of a developer per Section 20.80.060 of the Municipal Code. 7. That the approval of Use Permit No. 3325 will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing and working in the neighborhood, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City. 8. That the approval of a modification to the Zoning Code, so as to allow the use of valet parking will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, 	

September 22, 1988

DEBY
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WINBURN

CITY OF NEWPORT BEACH

ROLL CALL	INDEX
	<p>comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City and further that the proposed modification is consistent with the legislative intent of Title 20 of this Code.</p> <p><u>CONDITIONS:</u></p> <ol style="list-style-type: none"> 1. That development shall be in substantial conformance with the approved plot plan, floor plan, and elevations except as provided in the following conditions. 2. That all employees of the restaurant shall park in the shared, on-site parking lot. 3. That 64 parking spaces shall be provided for the restaurant during restaurant operating hours. 4. That onsite parking, vehicular circulation and pedestrian circulation systems be subject to further review by the Traffic Engineer. 5. That handicapped parking shall be provided as required by Code, and that the required number of handicapped parking spaces shall be designated solely for handicapped self parking and shall be identified in a manner acceptable to the City Traffic Engineer. Said parking spaces shall be accessible to the handicapped at all times. A handicapped sign on a post shall be required for each handicapped parking space. 6. That all improvements be constructed as required by Ordinance and the Public Works Department. 7. That all trash areas and mechanical equipment shall be screened from views from Bayside Drive, East Coast Highway, and adjoining properties. 8. That the operating hours of the restaurant shall be 5:00 p.m. to 2:00 a.m. Monday through Saturday, and 9:00 a.m. to 2:00 a.m. on Sundays. 9. That grease interceptors shall be installed on all fixtures on the restaurant facility where grease may be introduced into the drainage system in accordance with the provisions of the Uniform

September 22, 1988

DEBAY
DISANO
EDWARDS
MERRILL
PERSON
POMEROY
WINBURN

CITY OF NEWPORT BEACH

ROLL CALL		INDEX
	<p>Building Code, unless otherwise provided by the Building Department and the Public Works Department.</p> <p>10. That kitchen exhaust fans shall be designed to control smoke and odor to the satisfaction of the Building Department.</p> <p>11. That a washout area for refuse containers be provided in such a way as to allow direct drainage into the sewer system and not into the Bay or storm drains unless otherwise approved by the Building Department and the Public Works Department.</p> <p>12. That a trash compactor be provided in the restaurant facility.</p> <p>13. That restaurant development standards pertaining to walls, landscaping, utilities, and parking lot illumination shall be waived. Said waiver does not include the required public improvements.</p> <p>14. That Coastal Commission approval shall be obtained prior to the issuance of building permits.</p> <p>15. That the Planning Commission may add to or modify conditions of approval to this use permit, or recommend to the City Council the revocation of this use permit upon a determination that the operation which is the subject of this amendment causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.</p> <p>16. That this use permit shall expire unless exercised within 24 months from the date of approval as specified in Section 20.80.090 A of the Newport Beach Municipal Code.</p> <p style="text-align: center;">* * *</p>	

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CITY OF NEWPORT BEACH

ROLL CALL

INDEX

7. That the Planning Commission may add or modify conditions of approval to the use permit, or recommend to the City Council the revocation of this use permit, upon a determination that the operation which is the subject of this use permit, causes injury, or is detrimental to the health, safety, peace, morals, comfort or general welfare of the community.
8. That this use permit shall expire if not exercised within 24 months from the date of approval as specified in Section 20.80.090A of the Newport Beach Municipal Code.

* * *

Use Permit No. 3325 (Amended) (Public Hearing)

Item No. 4

UP3325AApproved

Request to amend a previously approved use permit which permitted a change in the allowable occupancy of an existing restaurant located in the C-1-H District. Said approval also included: a change in the operational characteristics of the restaurant so as to include a bar and dining area with background music; the establishment of a new parking requirement; the retention of a valet parking service; the establishment of operational hours from 5:00 p.m. to 2:00 a.m. Monday through Saturday and 9:00 a.m. to 2:00 a.m. on Sunday; and the continued use of a reciprocal parking arrangement with an adjoining commercial property. The proposed amendment includes a request to amend Condition No. 8 of the existing use permit so as to permit the restaurant to be open for Saturday lunch.

LOCATION: Lots A and B of Parcel Map 6-10 (Resubdivision No. 249) and a portion of Lot 1, Tract No. 5361, located at 333 Bayside Drive, on the southwesterly side of Bayside Drive, between East Coast Highway and Linda Isle Drive.

ZONE: C-1-H

APPLICANT: Hans Prager, Newport Beach

OWNER: Marvin Burton, Newport Beach

COMMISSIONERS

DEBAY
D. SANDO
EDWARDS
GLOVER
GROSS
MERLILL
POWER

CITY OF NEWPORT BEACH

ROLL CALL

INDEX

James Hewicker, Planning Director, stated that two letters of opposition from Linda Isle residents were received by staff regarding the request. The concerns expressed may be a misunderstanding of the public notice, inasmuch as the restaurant currently is open until 2:00 a.m., and the proposed application only establishes a lunch hour on Saturdays.

In response to a question posed by Commissioner Edwards, Mr. Hewicker explained that no noise problems have been registered with the Police Department by Linda Isle residents towards the subject restaurant.

The public hearing was opened in connection with this item, and Mr. Jerry King appeared before the Planning Commission on behalf of the applicant, and he concurred with the findings and conditions in Exhibit "A".

There being no others desiring to appear and be heard, the public hearing was closed at this time.

Commissioner Debay suggested that Mr. King notify the concerned Linda Isle residents for the purpose of clarification of the restaurant's operating hours.

Motion
All Ayes

Motion was made and voted on to approve Use Permit No. 3325 subject to the findings and conditions in Exhibit "A". MOTION CARRIED.

FINDINGS:

1. That the proposed development is consistent with the Land Use Element of the General Plan and the Local Coastal Program, Land Use plan, and is compatible with the surrounding land uses.
2. That the project will not have any significant environmental impact.
3. That adequate parking is available to accommodate the proposed change in the hours of operation of the restaurant.
4. That the waiver of the development standards as they pertain to walls, utilities, parking lot illumination, and

COMMISSIONERS

DEBAY
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EDWARDS
GLOVER
GROSS
MERRILL
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CITY OF NEWPORT BEACH

ROLL CALL

INDEX

landscaping, will not be detrimental to adjoining properties.

5. That the approval of Use Permit No. 3325 (Amended) will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing and working in the neighborhood or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

CONDITIONS:

1. That the proposed development shall be in substantial conformance with the approved site plan and floor plan.
2. That all previous applicable conditions of approval for Use Permit No. 3325 shall be fulfilled.
3. That the hours of operation of the restaurant shall be from 5:00 p.m. to 2:00 a.m. Monday through Friday and from 9:00 a.m. to 2:00 a.m. on Saturday and Sunday.
4. That Coastal Commission approval shall be obtained prior to the establishment of the Saturday lunchtime operation of the restaurant.
5. That a minimum of one parking space for each 41± square feet of "net public area" (62 spaces) shall be provided during the Saturday lunch operation of the restaurant and one parking space for each 40 square feet of "net public area" for all other hours of the restaurant's operation.
6. That the Planning Commission may add or modify conditions of approval to the use permit, or recommend to the City Council the revocation of this use permit, upon a determination that the operation which is the subject of this use permit, causes injury, or is detrimental to the health, safety, peace, morals, comfort or general welfare of the community.
7. That this use permit shall expire if not exercised within 24 months from the date of approval as specified in Section 20.80.090A of the Newport Beach Municipal Code.

* * *

CITY OF NEWPORT BEACH

May 4, 1995

CITY OF NEWPORT BEACH										May 4, 1995
ROLL CALL										INDEX
										<p>live entertainment shall be confined to the interior of the structure; and further that when the live entertainment is performed, all windows and doors within the restaurant shall be closed except when entering and leaving by the main entrance of the restaurant.</p> <p>4. That no dancing shall be permitted in the restaurant unless the Planning Commission approves an amendment to this use permit.</p> <p>5. That all previously applicable conditions of approval of Use Permit No. 1806 (Amended) shall remain in effect as a part of this approval.</p> <p>6. That the Planning Commission may add or modify conditions of approval to the use permit, or recommend to the City Council the revocation of this use permit, upon a determination that the operation which is the subject of this use permit, cause injury, or is detrimental to the health, safety, peace, morals, comfort or general welfare of the community.</p> <p>7. That this use permit shall expire unless exercised within 24 months of the date of approval as specified in Section 20.82.090A of the Newport Beach Municipal Code.</p>
										<p>***</p> <p><u>Use Permit No. 3325 (Amended) (Public Hearing)</u></p> <p>Request to amend a previously approved use permit which permitted a change in the allowable occupancy of an existing restaurant located on property located in the RMC-H District. Said approval also included: a change in the operational characteristics of the restaurant so as to include a bar and dining area with background music; the establishment of a new parking requirement; the retention of a valet parking service; the establishment of operational hours from 5:00 p.m. to 2:00 a.m. Monday through Friday and from 9:00 a.m. to 2:00 a.m. on Saturday and Sunday; and the continued use of a reciprocal parking arrangement with an adjoining commercial property. The proposed amendment requests a change in the operational characteristics to change the opening hour to 11:00 a.m., so as to provide lunch service on a daily basis, where the lunch service is currently limited to Saturdays and Sundays only; and to waive a portion of the required offstreet parking spaces for the daytime use.</p>

CITY OF NEWPORT BEACH

May 4, 1995

ROLL CALL	ADAMS	BROWN	D. SANO	GIFFORD	KRANZLEY	POMEROY	RIDGEWAY	INDEX
								<p>LOCATION: Lots A and B of Parcel Map 6-10 (Resubdivision No. 249) and a portion of Lot 1, Tract No. 5361, located at 333 Bayside Drive, on the southwesterly side of Bayside Drive between East Coast Highway and Linda Isle Drive.</p> <p>ZONE: RMC-H</p> <p>APPLICANT: Hans Prager (Yankee Tavern Restaurant), Newport Beach</p> <p>OWNER: Marvin Burton, Newport Beach</p> <p>James Hewicker, Planning Director, reviewed the subject application and the existing operation as previously amended and approved.</p> <p>The public hearing was opened in connection with this item, and Mr. Hans Prager, applicant, appeared before the Planning Commission. He concurred with the findings and conditions in Exhibit "A".</p> <p>Ms. Leanne Benvenuti, 106 Linda Isle, appeared before the Planning Commission for a clarification of the restaurant's operation. Director Hewicker explained that the only request is that the restaurant be allowed to be open for lunch. She said that the Linda Isle Community Association had concerns that the restaurant's operation would change and the change would have a negative impact on the neighborhood.</p> <p>There being no others desiring to appear and be heard, the public hearing was closed at this time.</p> <p>Motion was made and voted on to approve Use Permit No. 3225 (Amended) subject to the findings and conditions in Exhibit "A". MOTION CARRIED.</p>

Motion
All Ayes

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May 4, 1995

CITY OF NEWPORT BEACH										May 4, 1995
ROLL CALL	ADAMS	BROWN	DISANO	GIFORD	KRANZLEY	POMEROY	RIDGEWAY			INDEX
										<p><u>FINDINGS:</u></p> <ol style="list-style-type: none"> 1. That the proposed development is consistent with the Land Use Element of the General Plan and the Local Coastal Program, Land Use plan, and is compatible with the surrounding land uses. 2. That the project will not have any significant environmental impact. 3. That adequate parking is available to accommodate the proposed change in the hours of operation of the restaurant. 4. That the waiver of the development standards as they pertain to a portion of the off-street parking (30 daytime parking spaces during the week) walls, utilities, parking lot illumination, and landscaping, will not be detrimental to adjoining properties. 5. That the approval of Use Permit No. 3325 (Amended) will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing and working in the neighborhood or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City. <p><u>CONDITIONS:</u></p> <ol style="list-style-type: none"> 1. That the proposed development shall be in substantial conformance with the approved site plan and floor plan. 2. That all previous applicable conditions of approval for Use Permit No. 3325 and Use Permit No. 3325 (Amended) shall be fulfilled. 3. That the hours of operation of the restaurant shall be limited between 9:00 a.m. and 2:00 a.m., daily. 4. That Coastal Commission approval shall be obtained prior to the establishment of the weekday daytime operation of the restaurant. 5. That a minimum of 34 parking spaces shall be provided for the daytime operation of the subject restaurant during the week. A

-9-

28

CITY OF NEWPORT BEACH

May 4, 1995

ROLL CALL	INDEX
	<p>minimum of one parking space for each 41± square feet of "net public area" (62 spaces) shall be provided during the Saturday daytime operation of the restaurant, and one parking space for each 40 square feet of "net public area" (64 spaces) for all other hours of the restaurant's operation.</p> <p>6. That the development standards pertaining to a portion of the required parking spaces (30 daytime parking spaces during the week) walls, utilities, parking lot illumination, and landscaping,, are waived.</p> <p>7. That the Planning Commission may add or modify conditions of approval to the use permit, or recommend to the City Council the revocation of this use permit, upon a determination that the operation which is the subject of this use permit, causes injury, or is detrimental to the health, safety, peace, morals, comfort or general welfare of the community.</p> <p>8. That this use permit shall expire if not exercised within 24 months from the date of approval as specified in Section 20.80.090A of the Newport Beach Municipal Code.</p> <p style="text-align: center;">* * *</p> <p><u>Use Permit No. 3551 (Continued Public Hearing)</u></p> <p>Request to permit the establishment of a nautical museum in a floating structure currently occupied by Charley Brown's Restaurant, where the related off-street parking area is located in the RMC-H District. The proposed facility will include exhibit space, a meeting area, a library, a gift store and a cafe with on-sale beer and wine on the floating structure, with related off-street parking on the adjoining upland parcel. The proposal also includes a request to permit live entertainment, dancing, and alcoholic beverages for various museum functions, weddings, and other private parties.</p> <p>LOCATION: Lot A , Tract No. 5361, Parcel 4 of Parcel Map 93-111 (Resubdivision No. 995) and a portion of Block 54 of Irvine's Subdivision, located at 151</p>
	<p style="text-align: right;">Item No.3</p> <p style="text-align: right;"><u>UP3551</u></p> <p style="text-align: right;"><u>Approved</u></p>
	-10-

RESOLUTION NO. 1724

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING ACCESSORY OUTDOOR DINING PERMIT NO. 2007-001 FOR CONSTRUCTION AND OPERATION OF A 636-SQUARE FOOT OUTDOOR DINING AREA ON PROPERTY LOCATED AT 333 BAYSIDE DRIVE (PA2007-004)

WHEREAS, an application was filed by Jeff Reuter with respect to property located at 333 Bayside Drive, and legally described as Lots A & B of Parcel Map Book 6 Page 10 (Revised #249) and Portion of Lot 1 Tract 5361, requesting approval of an Accessory Outdoor Dining Permit to allow the construction and operation of a 636 square-foot outdoor dining area in conjunction with the existing full-service restaurant; and

WHEREAS, on June 7 and June 21, 2007, the Planning Commission held a noticed hearing in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California at which time the project application was considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Planning Commission at the hearing; and

WHEREAS, the Planning Commission makes the following findings required for approval of an Accessory Outdoor Dining Permit pursuant to Section 20.82.050 (B) of the Zoning Code:

1. Finding: That the proposed outdoor dining is accessory to the eating and drinking establishment.

Facts in Support of Finding: The proposed outdoor dining area is accessory to the existing 2,538 square-foot restaurant and is proposed to have a floor area of 636 square feet which is 25% of the existing restaurant consistent with Municipal Code Section 20.82.050 (A) that limits accessory outdoor dining areas to 25 percent of the existing restaurant's interior 2,538 square-foot net public area, or 1,000 square feet, whichever is less.

2. Finding: The establishment, maintenance or operation of the accessory outdoor dining will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood or injurious to property or improvements in the area.

Facts in Support of Finding:

- The use is accessory to the existing restaurant use, subject to all the findings and conditions of approval of Use Permit No. 3325 and its amendments, except as limited by this approval and is not an independent use.

- The proposed outdoor dining area subject to conditions of approval which include limitation on hours of operation, limitations on seating, partial enclosure of the under-patio smoking area, and relocation of other existing outdoor smoking areas to the front of the subject building will minimize the transmittal of sound to nearby residential uses thereby reducing the potential noise impacts to the nearby residential uses.
- The operation of the proposed development will minimally increase the outdoor noise level in the immediate vicinity. The noise study performed by the independent consultant shows that audible noise will be generated by the proposed outdoor dining area; however, reduction in the number of seats from 45 to 37 on the proposed outdoor patio, limitation of hours of food and/or drink service on the proposed patio to between the hours of 8:00 AM and 9:00 PM with all use and occupancy of the proposed patio to cease by 9:30 PM, and the requirement of a full-height wall/noise barrier with locking windows to be closed at 7:00 PM which barrier shall be constructed consistent with plans accompanying the project application.

3. Finding: That the proposed accessory outdoor dining will not be located so as to result in reduction of existing parking spaces.

Facts in Support of Finding: The proposed outdoor dining area will be located behind the existing building, overlooking the waterway, and thereby will not result in a reduction of the existing parking spaces located in the front of the building. Furthermore, Section 20.82.050 (A) does not require additional parking for accessory outdoor dining areas.

WHEREAS, the project qualifies for a Categorical Exemption pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act.

WHEREAS, the Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorney's fees, and damages which may be awarded to a successful challenger; and

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The Planning Commission of the City of Newport Beach hereby approves Accessory Outdoor Dining Permit No. 2007-001, subject to Conditions of Approvals in Exhibit "A" attached hereto and made part hereof.

Section 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk

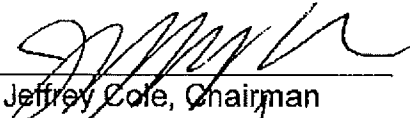
in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 21st DAY OF JUNE 2007.

AYES: Eaton, Cole and McDaniel

NOES: Hawkins, and Toerge

EXCUSED: Hillgren and Peotter

BY: 
Jeffrey Cole, Chairman

BY: 
Robert Hawkins, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL

ACCESSORY OUTDOOR DINING PERMIT NO. 2007-001

Conditions in ***bold-italics*** are project specific conditions. All others are standards conditions.

Planning Department

1. ***The development shall be in substantial conformance with the site plan and floor plan included with the application for approval of the accessory outdoor dining, except as noted in the following conditions.***
2. ***The outdoor dining area shall be used in conjunction with the existing full-service restaurant. No special events, promotional activities, private functions or private parties shall be allowed within the outdoor dining area.***
3. ***The outdoor dining area shall be limited to 636 sq. ft.***
4. ***The outdoor dining area shall be limited to a maximum of 37 seats, including handicap seats/table space. The seating and dining in the outdoor area shall be limited to dining table height (approximately 30 inches) and the use of elevated counters and barstools is prohibited.***
5. ***The outdoor dining area shall be provided with a full-height combination wall and sound attenuating window assembly consistent with plans submitted with this application for accessory outdoor dining and such assembly shall extend from the floor of the deck to the height of the underside of the existing roof and shall extend along the full length of the westerly side (overlooking the Bay) and southerly sides of the outdoor dining area. If constructed of glass or Plexiglas-type material, the partition shall be of solid construction, except that operable type sound attenuating windows shall be allowed. The sound attenuating windows shall be closed and locked from 7:00 p.m. to 8:00 a.m. The final sound attenuating window design and tamper-proof locking mechanism shall be subject to the approval of Planning Director and shall be maintained in good working order.***
6. ***The hours of operation of the outdoor dining area are limited to between the hours of 9:00 a.m. to 9:30 p.m., daily. Table service shall stop at 9:00 p.m. and all use of the outdoor dining area shall cease by 9:30 p.m., with the exception of clean up activities by the employees. The outdoor dining area shall be closed and not occupied after 9:30 p.m. The interior restaurant operation shall be governed by the hours specified in conjunction with the approval of Use Permit No. 3325 and its amendments.***

7. *Prior to occupancy or use of the outdoor dining area, the applicant shall install on the west and south elevations a full height, solid glass or Plexiglas wall/screen partition on or near the bulkhead that extends from the bottom (underside) of the proposed dining deck to the ground. The design of the wall/partition and the method of installation shall be reviewed and approved by the Planning Director. The configuration of the area below the dining deck shall be in accordance with the approved floor plan that shows only a walkway and landscape area.*
8. *The applicant shall submit to the Public Works Department a parking and on-site circulation plan consistent with the conditions of approval of the use permit previously granted for operation of the indoor restaurant and as referenced in Condition 24, below. The parking plan shall include location of valet parking pick-up and drop-off area that is located so as to be shielded from nearby residences on Linda Isle by the subject restaurant building so to minimize the transmission of noise to Linda Isle to the maximum extent feasible. The parking plan shall include a waiting/queuing area for guests dropping off or picking up automobiles from valet parking and a designated smoking area for patrons of the restaurant.*
9. *Alcoholic beverage service shall be prohibited in the outdoor dining areas, unless the approval of the Police Department and the State Department of Alcoholic Beverage Control are first obtained. Any substantial physical changes required (as determined by the Planning Department) to accommodate alcoholic beverage service shall be subject to the approval of an amendment to this Outdoor Dining Permit.*
10. *All applicable conditions of approval of Use Permit No. 3325 and its amendments shall remain in force.*
11. *The noise generated by the outdoor dining activity shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. That is, the sound shall be limited to no more than depicted below for the specified time periods:*

	<i>Between the hours of 7:00 a.m. and 10:00 p.m.</i>	<i>Between the hours of 10:00 p.m. and 7:00 a.m.</i>
<i>Measured at the property line of commercially zoned property:</i>	65 dBA	60 dBA
<i>Measured at the property line of residentially zoned property:</i>	55 dBA	50 dBA
<i>Measured in the interior of a residential structure</i>	45 dBA	40 dBA

12. *The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Planning Director.*
13. *No amplified music or entertainment is permitted in the outdoor dining area. No outside paging system, loudspeaker or other noise generating device shall be utilized in conjunction with this outdoor dining area.*
14. *The proprietor shall actively control any noise generated by the patrons of the facility.*
15. Light sources within the outdoor dining areas and the parking lot shall be designed or altered to eliminate light and glare spillage onto adjacent properties or uses. Prior to issuance of a certificate of occupancy, the applicant shall demonstrate to the Planning Department that the exterior lighting system has been designed and directed in such a manner as to conceal the light source and to minimize light spillage and glare to the adjacent properties. Prior to issuance of the certificate of occupancy or final of building permits, the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of light and glare specified by this condition of approval.
16. Trash receptacles for patrons shall be conveniently located outside of the related food service facility to serve the accessory outdoor dining area or the area shall be actively bused to minimize the potential for trash to fall into the Bay or elsewhere on the subject property.
17. *Roof coverings over the outdoor dining area shall not have the effect of creating a permanent enclosure. The use of any other type of overhead covering shall be subject to review and approval by the Planning Director*

and may require an amendment to this permit or an amendment to Use Permit No. 3325.

18. ***This approval and operations and use of the outdoor patio shall be subject to periodic review by the Planning Commission, being one (1) year from the issuance of the certificate of occupancy for the outdoor dining area, to determine compliance with the conditions of approval and to determine the effectiveness of the conditions of approval to prevent or mitigate noise impacts or problems.***
19. The Planning Department may add to or modify conditions of approval to this outdoor dining permit, or revoke this approval upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code or other applicable conditions and regulations governing the food establishment. The Planning Director may also revoke of this permit upon a determination that the operation which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
20. This approval shall expire unless exercised within 24 months from the end of the appeal period as specified in Section 20.91.050 of the Newport Beach Municipal Code.
21. ***The applicant shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity to residential areas and to be courteous to residential neighbors while outside the establishment.***

Public Works Department

22. The area outside of the food establishment, including the public sidewalks, shall be maintained in a clean and orderly manner and may be subject to providing periodic steam cleaning of the public sidewalks as required by the Public Works Department.
23. All on-site runoff generated (including rainfall runoff) within the outdoor dining area shall be plumbed for discharge into the existing on-site sanitary sewer system. City (Public Works Department, Code Enforcement and Water Quality Division and Utilities Department) approval of such discharge system is required. The washing of the deck surface with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.
24. ***The applicant shall submit a valet parking plan to the Public Works Department that shows the parking, valet station and pick up and drop off area shall be reviewed to determine compliance with the provisions of Condition of Approval No. 4 of Use Permit No. 3325 as approved by the Planning Commission on September 22, 1988.***

Building Department

25. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code.

Attachment No. PC 3

NBPD Memorandum

**City of Newport Beach
Police Department**

M e m o r a n d u m

April 4, 2011

TO: Janet Johnson Brown, Associate Planner

FROM: Detective Bryan Moore

SUBJECT: 3-Thirty-3 Waterfront Restaurant, 333 Bayside Drive, Use Permit No. UP2011-007 (PA2011-041).

At your request, the Police Department has reviewed the project application for *3-Thirty-3 Waterfront Restaurant*, located at 333 Bayside Drive, Newport Beach. Per the project description, the applicant is requesting a use permit application to extend the hours of operation for an existing outdoor dining patio from 9:00 a.m. to 9:30 p.m. daily to 9:00 a.m. to 1:00 a.m. daily. Approval of an Accessory Outdoor Dining Permit was granted by the Planning Commission on June 21, 2007, allowing a 636-square foot outdoor dining area with a maximum of 37 seats. Elevated counters and barstools were prohibited. The sound attenuating windows are required to be closed and locked from 7:00 p.m. to 8:00 a.m. to minimize noise impacts to the residential development on Linda Isle, located across a channel approximately 215 feet from the outdoor dining patio.

The applicant currently holds a Type 47 (General – Eating Place) license with the Department of Alcoholic Beverage Control.

Applicant History

The applicant, Jeff Reuter, has been a resident of the City of Newport Beach for the past 58 years. He has been involved in the restaurant business, either as a manager or owner, for approximately 40 years. He is currently the owner of 3-Thirty-3 Waterfront which has been operating on Bayside Drive since 2004.

3-Thirty-3 Waterfront restaurant provides a high quality menu in a relaxed, but elegant atmosphere. The restaurant also features live entertainment and a lively bar scene on the weekends until 2 a.m.

It should be noted that the Police Department has received several complaints (in the last year) from residents on Linda Isle alleging disturbances/noise from 3-Thirty-3 Waterfront. After subsequent investigations (by the NBPD) as well as interviews with the owner and the complaining parties, it was evident that the noise was being generated from patrons on the nearby docks/boats. Many of these patrons were arriving to or leaving 3-Thirty-3 and/or Sol restaurant.

During these investigations there was no indication that the patio at 3-Thirty-3 was the source of the noise complaints.

After several discussions with Mr. Reuter it appeared as though he took reasonable steps to mitigate the noise on the docks as the complaints to the Police Department have recently declined.

Police Activities and Calls for Service Data

The below information represents the time period between March 30, 2010 through March 30, 2011:

TYPE	CALLS/INCIDENTS	NOTES
Citizen Assist	12	Assist, keep the peace and suspicious circs
Public Intoxication	9	Drunk subject(s) causing a disturbance
Disturbances	6	Noise (patrons on patio and dock area)
DUI Drivers	9	Reports of DUI's leaving the loc *
DUI Arrest	18	Arrestee had been drinking at loc
Batteries/Assaults	4	Subjects fighting or preparing to fight
Miscellaneous	20	Traffic, alarms and medical aids
Municipal Code	3	Patio violation, bandit taxi, etc
Officer Initiated	17	Vehicle stops, bar checks, etc.
Vandalism	1	Patron vandalized bathroom sink

* It should be noted that 5 of the reports of DUI drivers were made by an employee of 3-Thirty-3.

Recommendations

The Police Department has no objection to the operation as described by the applicant.

It should be noted that the proposed operation will offer alcoholic beverage service (for on-site consumption) in combination with food service, late hours, and live entertainment. As a result, the applicant/operator will be subject to an Operator's License issued by the Chief of Police.

Signs and Displays

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

Hours of Operation

The current operating hours of the restaurant are from 9:00 a.m. to 2:00 a.m., daily.

The proposed hours of the outdoor patio are from 9:00 a.m. to 1:00 a.m. daily.

Security

The applicant shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department.

The procedures included in the plan and any recommendations made by the Police Department shall be implemented and adhered to for the life of the Use Permit.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

For the purposes of this application, staff may also want to consider establishing conditions that would require a Special Event Permit. A Special Event Permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation. For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

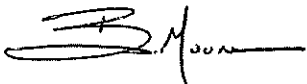
Other Recommended Conditions

In addition, the Police Department has determined that the following conditions would be appropriate for the Conditional Use Permit for the business:

1. Approval does not permit 3-Thirty-3 Waterfront to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a Use Permit.
2. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
3. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
4. Food from the full service menu must be made available during any "happy hour" type of reduced price alcoholic beverage promotion. There shall be no reduced price alcoholic beverage promotion after 9 p.m.
5. VIP passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.

6. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
7. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
8. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
9. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
10. There shall be no live entertainment allowed on the premises without first obtaining a permit from the City.
11. Noise from the live entertainment shall be confined to the interior of the structure.
12. There shall be no dancing allowed on the premises.
13. Strict adherence to maximum occupancy limits is required.
14. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.

If you have any questions, please contact Detective Bryan Moore at (949) 644-3725.



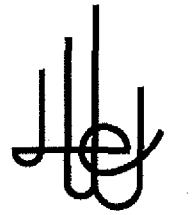
Bryan Moore, ABC Liaison
Detective Division



Craig Fox, Captain
Detective Division Commander

Attachment No. PC 4

Project Plans and Photographs



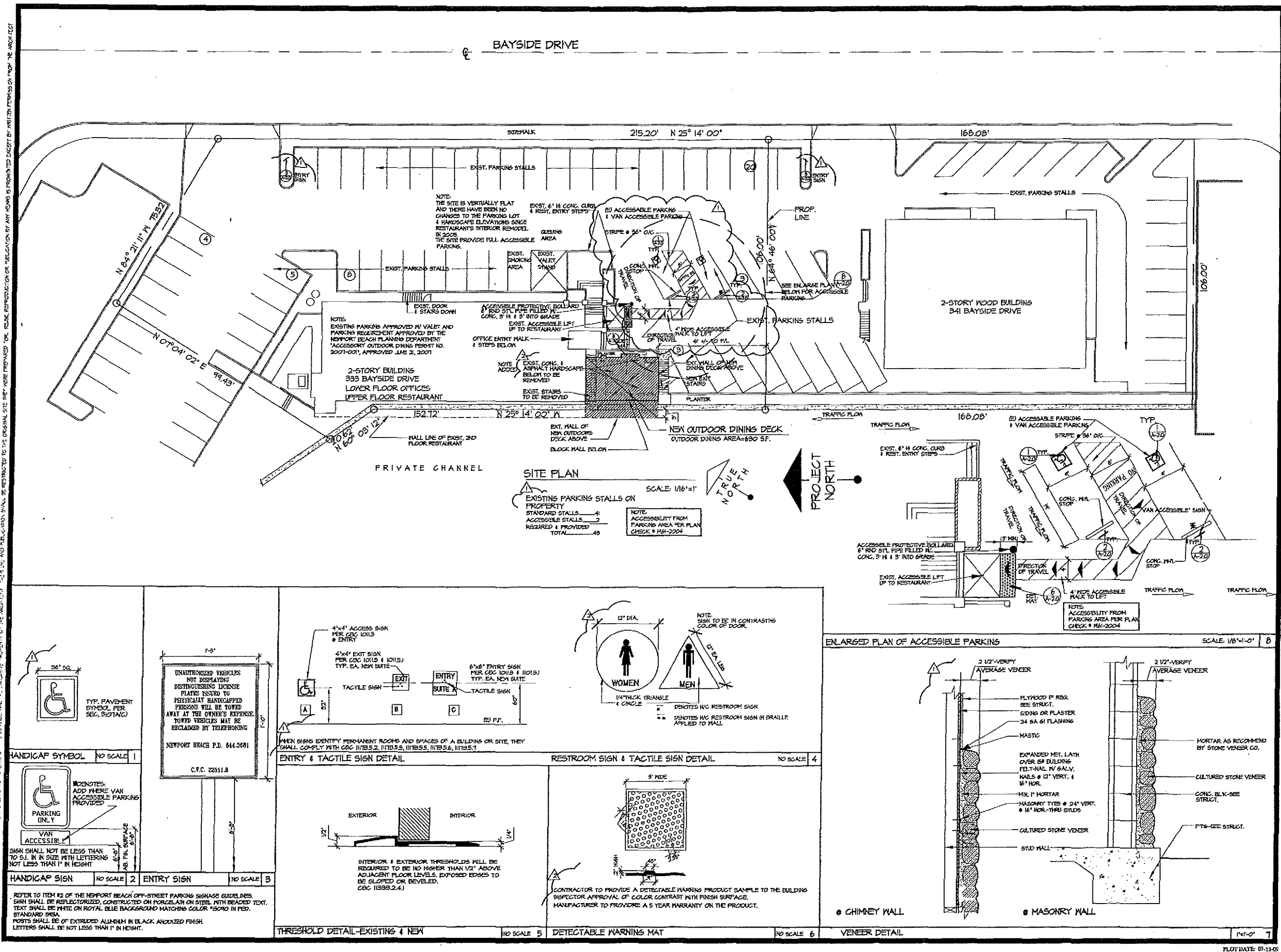
PROJECT:

NEW OUTDOOR DINING DECK
FOR
EXISTING RESTAURANT AT 333 BAYSIDE DRIVE
NEWPORT BEACH, CA 92660

REVISION OF ESTATE RECORD:

[illegible]

HEET NUMBER
A-2.0



FLUT DATE: 07.13-06



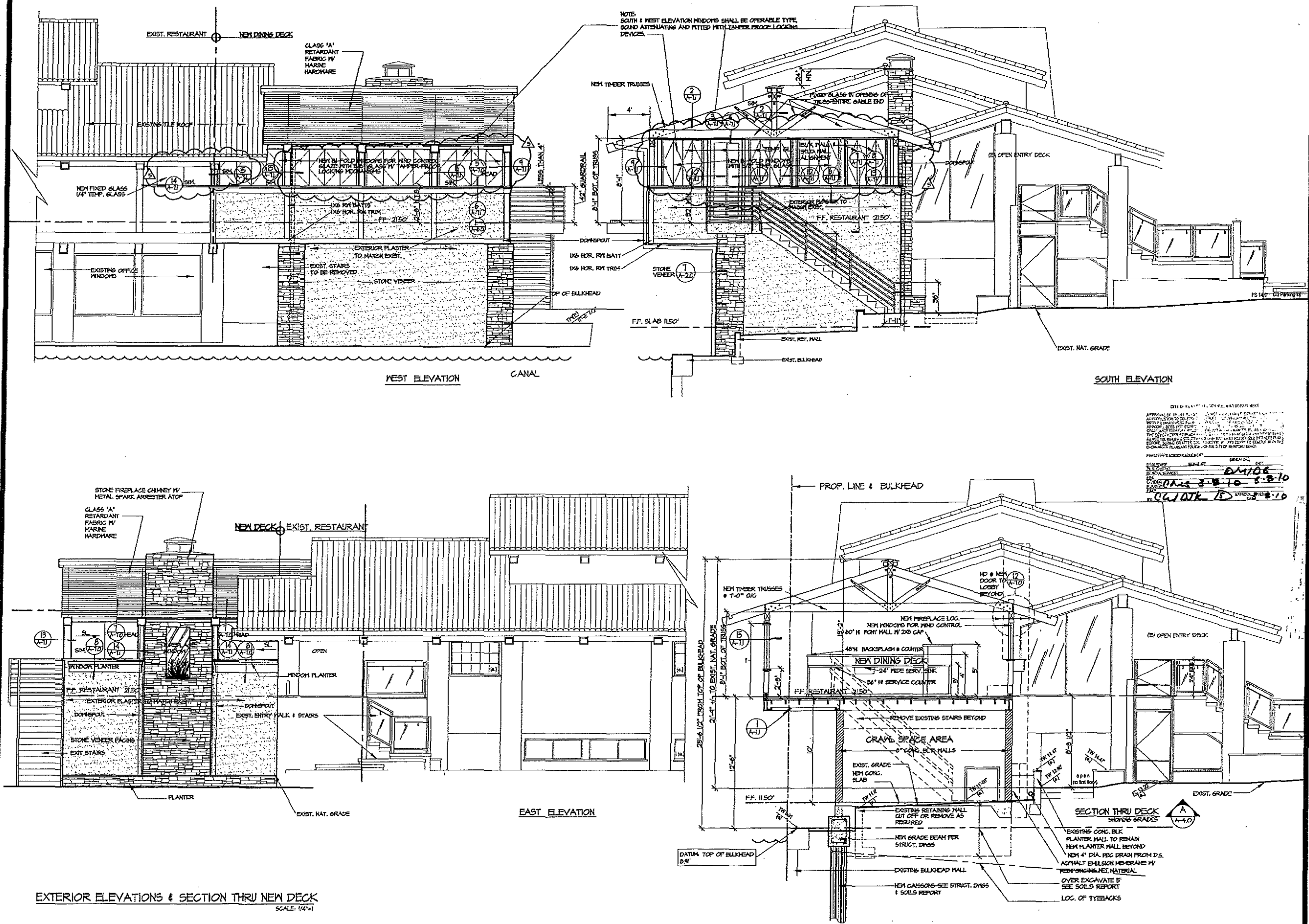
NEW OUTDOOR DINING DECK
FOR
EXISTING RESTAURANT AT 333 BAYSIDE DRIVE
NEWPORT BEACH, CA 92660

Source: *U.S. Census Bureau, Bureau of Economic Analysis, Bureau of Economic Research, Bureau of Labor Statistics, Bureau of Transportation Statistics, Bureau of Economic Analysis, Bureau of Economic Research, Bureau of Labor Statistics, Bureau of Transportation Statistics, Bureau of Economic Analysis, Bureau of Economic Research, Bureau of Labor Statistics, Bureau of Transportation Statistics*.

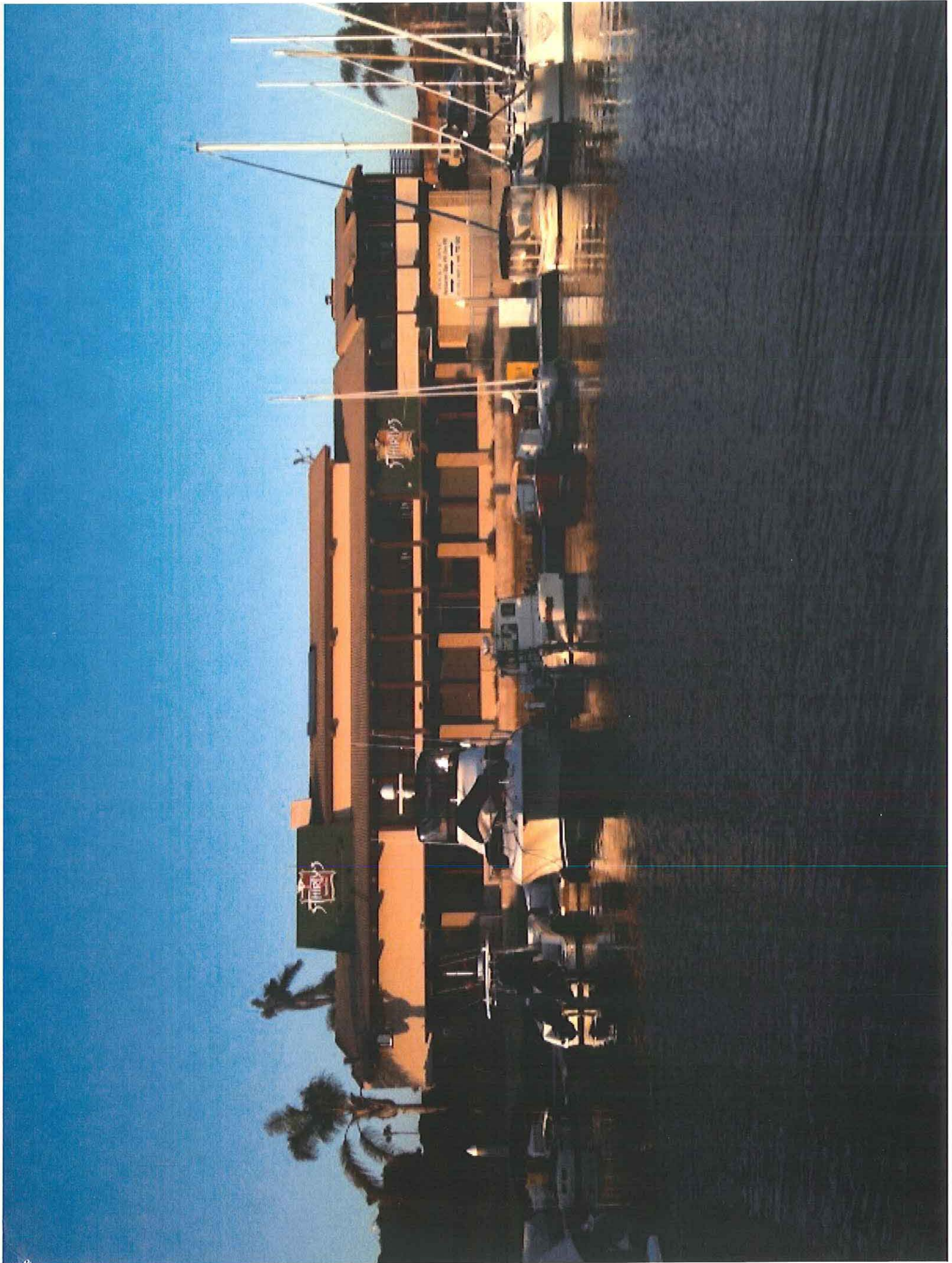


A-4.0

OF -



PLOT DATE: 03-04-10

















Attachment No. PC 5

Applicant's Written Statement

This letter to the Planning Department is for review and consideration for the Planning Commission package.

Please allow me to introduce myself, my name is Jeff Reuter. I have been a resident of Newport Beach for all of my 58 years. Currently I am the owner of 3-Thirty-3 Waterfront restaurant on the corner of Bayside Drive and Pacific Coast Highway. We have been open now for a little over six years. Our particular location has been a number of restaurants dating back to Isadore's and Wuben's some forty years ago. Most recently, before us it was owned by Hans Prager of The Ritz restaurant and then Dave Salisbury; it was then called the Yankee Tavern.

Without going into too much depth, I would like to give you a little background. All of my predecessors dating back forty years had some kind of plan to build an outdoor patio at our restaurant location; given the fact that we are a beach community with only a few restaurants on the water, and only a handful that have an outdoor eating area. All of them "bailed" on the idea when they found out the costs involved and the amount of work it would take to get it through the city process. Some made it as far as submitting plans and then gave up. I decided that the citizens needed it after making a post card size comment card and inserting them in the guest checks. We received thousands of responses from our customers over the years, not one has been negative; so we began the process.

Long story short, it has turned out to be the nightmare my predecessors imagined it might be; but in the years to come, all of Newport will be very glad we did go to the trouble, the pain and suffering will long be forgotten. The project that was supposed to take six months and \$400,000.00 to build a 600 square foot patio (no restroom, kitchen, bar, - just a patio) – took a year and four months and cost over \$800,000.00.

It will take approximately 15-18 years to pay for itself at our current rate, not the 3-5 that was anticipated.

The purpose of our application is because when we applied, and were granted permission to build; a stipulation was invoked because of two individuals that live on Linda Isle directly across from the restaurant location. Forgetting that the restaurants, gas station, and car dealership were there long before the houses on Linda were built; it was "assumed" that the bar patrons were going to be loud and that the noise might carry over to the contiguous houses. We attempted to explain that the patio was going to be strictly dining, and that it would be perfectly quiet at all times; but because of the ranting's of those individuals, the Council put a closing time of 9:30 p.m. on the patio. Our restaurant neighbor 50 feet to our right has an outdoor patio with no roof that is open until 2:00 A.M. – 7 days a week, and is attached to their bar.

We have waited this long to submit our application to prove that the patio is exactly what we said it was going to be; a full service dining area ONLY. All the tables are low level, (no bar stools) and the clientele is slightly older than our patrons inside; exactly what we were trying to accomplish. At any given time the patio is in use, absolutely NOTHING can be heard from the outside of the building. The windows are never opened past dusk,

(they have only been opened during the day a couple times as the wind is way too cold coming down the harbor channel), and the roof is always closed. You can barely hear people talking if you are standing IN THE ROOM.

If you are not familiar with the location, I ask that you stop by at your convenience to see exactly what I am talking about. I can see how there could have been a misconception on paper as to the noise that could be generated by patrons drinking and partying late into the evening out on the deck; but I assure you, that is not the case in any way.

Given the new laws that have been enacted regarding the Police Departments ability to curtail establishments that are “out of line”; I ask that the same consideration be given to situations like this where we be allowed to further prove we are exactly what we say we want to be, a nice, quiet place to have dinner outside; taking in the waterfall, fireplace, and the harbor view.

Once again I apologize for this type of introduction, but it is imperative that you have as much time and information, as is available to help correct a situation that was misunderstood initially, and is in the best interest of all parties, when resolved.

I Thank You for taking the time to read this, and would like to give you a call after you have received the staff report to see if I may answer any questions or concerns that you might have.

Sincerely,

Jeff Reuter
3-Thirty-3 Waterfront